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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/627,002
Filing Date: July 25, 2003
Appellant(s): GABRIEL ET AL.

MAILED

JAN 06 2008

Technology Center 2600

Ms. Michelle Carniaux
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 22 October 2007 appealing from the Office action mailed 16 July 2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,785,901	HORIWITZ et al.	8-2004
6,704,929	OZER et al.	3-2004
2003/0014750	KAMEN	1-2003
2003/0088420	ALSAFADI et al.	5-2003

Ozer et al., "Tracking viewing behavior of advertisements on a home entertainment system", US Patent Application 09/376,631, filed 18 August 1999.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 2-5, 9-14, 16, 19, 20, 21, 23-25, 27-30, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horiwitz et al. (US Pat No. 6,785,901) in view of Ozer et al. (US Pat No. 6,704,929).

In consideration of claim 9, the Horiwitz et al. reference discloses a "method to control access to content via a player system" (Figure 2) that is "accessible by a plurality of users" associated with the household (Col 10, Lines 46-54). The method comprises "providing a default profile including at least one filtering criterion . . . describing at least one of a characteristic of content permitted for all of the plurality of users and a characteristic of content prohibited for all of the plurality of users" (Col 2, Lines 38-54; Col 9, Lines 19-21; Col 10, Lines 55-62). The particular designation of what

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ratings/content to block also serves to designate which characteristics are allowed. The system subsequently “compares metadata with a selected content and the filtering criterion of the default profile, the metadata including information related to the selected content” such as the particular rating associated with the program whereupon the system “permits or denies access to the content based upon the comparison” (Col 11, Lines 1-63) resulting in the display of the content. The Horiwitz et al. reference discloses the particular usage of “metadata associated with the selected content” in conjunction with ratings data derived from an electronic program guide (Figures 4 and 5; Col; 7, Line 17 – Col 8, Line 38). The reference teaches that when a user selects a particular channel that the system identifies the programming content (Col 11, Lines 54-56). The reference, however, is silent with respect to how the particularly tuned program is associated with its corresponding metadata.

In an analogous art pertaining to the field of video distribution systems, the Ozer et al. ('929) reference discloses a system and method for tracking viewing behavior of a home entertainment system. The reference teaches that viewer programming is monitored and that information such as that associated with ratings “metadata” as derived from the EPG is captured (Col 7, Line 53 – Col 8, Line 23; Col 11, Lines 16-28). The reference further incorporates by reference in its entirety US. Patent application No. 09/376,631 (now US Pat No. 6,708,335 – however, hereafter referred to as the Ozer et al. ('631) application) entitled “Tracking Viewing Behavior of Advertisements on a Home Entertainment System”. The incorporated Ozer et al. ('631) application in conjunction with identifying programming and associated metadata including ratings, discloses that “metadata is

associated with the selected content using a URL in connection with the selected content, and wherein the method further comprises obtaining the metadata using the URL, wherein the URL associates the metadata with the selected content” (Page 15, Line 1-23; Page 16, Line 22 – Page 17, Line 6; Page 17, Line 18 – Page 19, Line 10). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et al. such that the “metadata is associated with the selected content using a URL in connection with the selected content, and wherein the method further comprises obtaining the metadata using the URL in connection with the selected content, and wherein the method further comprises obtaining the metadata using the URL, wherein the URL associates the metadata with the selected content” as taught by Ozer et al. for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. ('929): Col 2, Lines 19-34).

Claims 10 and 11 are similarly rejected using the combination of Horiwitz et al. and Ozer ('929). As previously noted, the Horiwitz et al. reference discloses a “method to control access to content via a player system” (Figure 2) that is “accessible by a plurality of users” associated with the household (Col 10, Lines 46-54). The method comprises “providing a default profile including at least one filtering criterion . . . describing at least one of a characteristic of content permitted for all of the plurality of users and a characteristic of content prohibited for all of the plurality of users” (Col 2, Lines 38-54; Col 9, Lines 19-21; Col 10, Lines 55-62). The particular designation of what ratings/content to block also serves to designate which characteristics are allowed. The system subsequently “compares metadata with a selected content and the filtering

criterion of the default profile, the metadata including information related to the selected content” such as the particular rating associated with the program whereupon the system “permits or denies access to the content based upon the comparison” (Col 11, Lines 1-63) resulting in the display of the content. The reference, however, is silent with respect to how the particularly tuned program is associated with its corresponding metadata.

In an analogous art pertaining to the field of video distribution systems, the Ozer et al. ('929) reference discloses a system and method for tracking viewing behavior of a home entertainment system and further incorporates by reference in its entirety US. Patent application No. 09/376,631 (now US Pat No. 6,708,335 – however, hereafter referred to as the Ozer et al. ('631) application) entitled “Tracking Viewing Behavior of Advertisements on a Home Entertainment System” in relationship to tracking of information. The incorporated Ozer et al. ('631) application teaches “obtaining the metadata using the pointer” wherein the “pointer to the metadata is encoded in a Vertical Blanking Interval of a signal of the selected content” and is a “URL” (Ozer et al. ('631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et al. such that “a pointer to the metadata is encoded in a Vertical Blanking Interval of a signal of the selected content, and the method further comprise obtaining the metadata using the pointer” as taught by Ozer et al. for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. ('929): Col 2, Lines 19-34).

Claim 2 is rejected wherein “access to the selected content is permitted if the comparison indicates that the selected content meets the filtering criterion of the default profile”. For example, if the default profile defines only TV-Y is acceptable, then programming with the rating can be viewed without a user needing to log into the system.

Claim 3 is rejected wherein the “content includes at least one of audio and video data” (Horiwitz et al.: Col 5, Lines 44-64).

Claim 4 is rejected wherein the “information of the meta data includes at least one of an MPAA rating [and] a content advisory (Horiwitz et al.: Col 7, Lines 18-30).

Claim 5 is rejected wherein the “filtering criterion includes at least one of an identification of acceptable ratings [and] identification of acceptable content advisories” (Horiwitz et al.: Col 7, Lines 18-30; Col 10, Lines 58-62).

Claim 12 is rejected wherein the method further “provides a user profile associated with a particular one of the plurality of users, the user profile including at least one filtering criterion describing at least one of . . . a characteristic of content prohibited from being accessed by the particular one of the users; comparing the filtering criterion of the user profile and the metadata; and permitting access to the selected content if the content meets the filtering criterion” (Horiwitz et al.: Figure 6; Col 10, Line 46 – Col 11, Line 63).

Claim 13 is rejected wherein the method further comprises “reverting back to the filtering criterion of the default profile in connection with accessing subsequent content” (Horiwitz et al.: Col 11, Lines 39-44).

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Claim 14 is rejected wherein the method comprises “requiring the user to provide user information if the selected content does not meet the filtering criterion of the default profile” should the viewer desire to watch selected content which is not permitted by the default profile (Horiwitz et al.: Col 10, Lines 55-65).

Claim 16 is rejected wherein the “comparing step includes comparing the metadata and the filtering criterion of the default profile without requiring a user to provide user information” (Horiwitz et al.: Col 10, Lines 55-65).

Claim 21 is rejected in light of claim 1. Figures 1 and 2 of the Horiwitz et al. reference illustrate a “content player accessible to a plurality of users”. The player comprises a “memory device” [22] for “storing a default profile including at least one filtering criterion . . . describing at least one of a characteristic of content permitted for all of the plurality of users and a characteristic of content prohibited for al of the plurality of users” (Col 2, Lines 38-54; Col 9, Lines 19-21; Col 10, Lines 55-62). The particular designation of what ratings/content to block also serves to designate which characteristics are allowed. The “processor” [21] is “configured to compare metadata associated with a selected content and the filtering criterion of the default profile” (Col 11, Lines 1-53) whereupon the “processor [is] configured to permit or deny access to the content based upon the comparison” (Col 11, Lines 54-63) resulting in the display of the content as appropriate. The “processor” [21] “controls rendering of the content on a television” [204] and is “provided in a set-top box” (Col 5, Line 44 – Col 6, Line 11).

Horiwitz et al., however, is silent with respect to how the particularly tuned program is associated with its corresponding metadata in order to be subsequently utilized in

conjunction with the ‘comparison’. In an analogous art pertaining to the field of video distribution systems, the Ozer et al. (‘929) reference discloses a system and method for tracking viewing behavior of a home entertainment system and further incorporates by reference in its entirety US. Patent application No. 09/376,631 (now US Pat No. 6,708,335 – however, hereafter referred to as the Ozer et al. (‘631) application) entitled “Tracking Viewing Behavior of Advertisements on a Home Entertainment System” in relationship to tracking of information. The incorporated Ozer et al. (‘631) application teaches a “processor [being] configured to obtain the metadata for comparison using the pointer, the pointer being encoded in a vertical blanking interval of a signal of the selected content, and wherein the processor obtains the metadata . . . using the pointer” (Ozer et al. (‘631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et al. such that the “processor [being] configured to obtain the metadata for comparison using the pointer, the pointer being encoded in a vertical blanking interval of a signal of the selected content, and wherein the processor obtains the metadata for comparison using the pointer” as taught by Ozer et al. for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. (‘929): Col 2, Lines 19-34).

Claim 23 is rejected wherein the “pointer is a URL”.(Ozer et al. (‘631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10).

Claim 24 is rejected wherein the “processor is configured to manage the default profile and a plurality of user profiles . . . being associated with a respective one of the users” (Horiwitz et al.: Figure 6).

Claim 25 is rejected wherein the “filtering criterion includes at least one of an identification of acceptable ratings [and] identification of acceptable content advisories” (Horiwitz et al.: Col 7, Lines 18-30; Col 10, Lines 58-62).

Claim 27 is rejected wherein the Horiwitz et al. reference discloses a “method to control access to content via a player system” as previously set forth. In particular, the reference discloses “selecting content” whereupon the system “obtains . . . metadata” and “compares the obtained the metadata and at least one filtering criterion . . . describing a characteristic of at least one of permitted content or prohibited content”. The system subsequently, “permits or denies access to the selected content based on the comparison” (Col 2, Lines 38-54; Col 10, Lines 55-62; Col 11, Lines 1-63). The reference, however, is silent with respect to the particular usage of a “pointer” in association with the user tuning to a particular channel so as to link the selected program with the corresponding “metadata” associated with the program.

As aforementioned, in an analogous art pertaining to the field of video distribution systems, the Ozer et al. reference and its incorporated Ozer et al. ('631) application disclose a method wherein “selected content has metadata linked thereto via a pointer” and “obtaining the metadata using the pointer” (Ozer et al. ('631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et

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al. such that the “metadata is associated with the selected content using a URL in connection with the selected content, and wherein the method further comprises obtaining the metadata using the URL” as taught by Ozer et al. for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. (‘929): Col 2, Lines 19-34).

Claim 28 is rejected wherein the method comprises “extracting the pointer from the VBI” wherein the “pointer is embedded in a Vertical Blanking Interval (VBI) of a signal of the selected content” (Ozer et al. (‘631): Page 15, Lines 9-12).

Claim 29 is rejected wherein the “pointer is a URL” and the “step of obtaining the metadata of the selected content includes obtaining the metadata over the Internet using the URL” (Ozer et al. (‘631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10).

Claim 30 is rejected in light of the aforementioned rejection of claim 27. Figures 1 and 2 of Horiwitz et al. illustrate a “content player” such as a set-top box. The player comprises a “memory device” [22] for “storing at least one filtering criterion describing a characteristic of at least one of permitted content or prohibited content” (Col 2, Lines 38-54; Col 10, Lines 55-62). The “processor” [21] “compares the metadata to the filtering criterion” and subsequently, “permits or denies access to the selected content based on the comparison” (Col 2, Lines 38-54; Col 10, Lines 55-62; Col 11, Lines 1-63). The reference, however, is silent with respect to the particular usage of a “pointer” in association with the user tuning to a particular channel so as to link the selected program with the corresponding “metadata” associated with the program.

As aforementioned, in an analogous art pertaining to the field of video distribution systems, the Ozer et al. ('929) reference and its incorporated Ozer et al. ('631) application disclose a method wherein a "processor is configured to obtain a pointer to metadata associated with selected content" and to "extract the pointer from a vertical blanking interval (VBI) of a signal of the selected content" (Ozer et al. ('631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et al. such that the "processor [is] configured to obtain a pointer to metadata associated with selected content, obtain the metadata using the pointer, compare the metadata to the filtering criterion, and to permit or deny rendering of the selected content based on the comparison, wherein the processor is configured to extract the pointer from a vertical blanking interval (VBI) of a signal of the selected content" for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. ('929): Col 2, Lines 19-34).

Claim 32 is rejected wherein the "pointer is a URL" and the "processor is further configured to obtain the metadata over the Internet using the URL" (Ozer et al. ('631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10).

Claim 33 is rejected as previously set forth wherein the Horiwitz et al. reference discloses a "method to control access to content stored on a memory device" such as a digital recording device (Col 5, Lines 47-55). The method comprises "selecting the content stored on the memory device, reading metadata associated with the content . . . comparing the metadata to at least one stored filtering criterion . . . describing a

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characteristic of at least one of permitted and prohibited content, and permitting or denying rendering of the content based on the comparison” (Col 2, Lines 38-54; Col 9, Lines 19-21; Col 10, Lines 55-62; Col 11, Lines 1-63). The reference, however, is silent with respect to the particular usage of a “pointer” in association with the user tuning to a particular channel so as to link the selected program with the “metadata” associated with the program.

As aforementioned, in an analogous art pertaining to the field of video distribution systems, the Ozer et al. (‘929) reference and its incorporated Ozer et al. (‘631) application disclose a method wherein “metadata is read from a location indicated by a pointer extracted from a vertical blanking interval (VBI) of a signal of the selected content” (Ozer et al. (‘631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et al. such that the “metadata is read from a location indicated by a pointer extracted from a vertical blanking interval (VBI) of a signal of the selected content” for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. (‘929): Col 2, Lines 19-34).

Claim 34 is rejected wherein the “metadata includes ratings information” (Horiwitz et al.: Col 7, Lines 18-30).

Claim 35 is rejected wherein Figures 1 and 2 of the Horiwitz et al. reference illustrate a “content player”. The player comprises a “memory device” [22] “storing at least one filtering criterion describing a characteristic of at least one of permitted content and prohibit content” in association with the default profile content (Col 2, Lines 38-54; Col

10, Lines 55-62). The player further comprises a “processor” [21] that is “configured to compare at least one stored filtering criterion with metadata associated with selected content” and to “permit or deny rendering of the selected content based on the comparison” (Col 9, Lines 19-21; Col 11, Lines 54-63) resulting in the display of the content as appropriate. The reference, however, is silent with respect to the particular usage of a “pointer” in association with the user tuning to a particular channel so as to link the selected program with the “metadata” associated with the program.

As aforementioned, in an analogous art pertaining to the field of video distribution systems, the Ozer et al. ('929) reference and its incorporated Ozer et al. ('631) application disclose a method wherein a “processor is configured to retrieve the metadata using a pointer” (Ozer et al. ('631): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Horiwitz et al. such that the “processor is configured to retrieve the metadata using a pointer” for the purpose of providing a means so as to accurately measure television viewing behavior (Ozer et al. ('929): Col 2, Lines 19-34).

2. Claims 6 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horiwitz et al. (US Pat No. 6,785,901), in view of Ozer et al. (US Pat No. 6,704,929), and in further view of alSafadi et al. (US Pub No. 2003/0088420 A1).

In consideration of claims 6 and 26, the Horiwitz et al. reference is silent with respect to the “metadata being coded in XML”. In an analogous art pertaining to the field of content distribution, the alSafadi et al. reference discloses the particular distribution of

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EPG ratings information or “metadata being coded in XML” (Para. [0024] and [0043]).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Horiwitz et al. such that the “metadata is coded in XML” for the purpose of providing a means that allows for different types of content from different sources to be configured in a standardized manner for efficient processing by different EPGs (alSafadi et al.: Para. [0002] – [0005]).

3. Claims 7, 8, 15, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horiwitz et al. (US Pat No. 6,785,901), in view of Ozer et al. (US Pat No. 6,704,929), and in further view of Kamen (US Pub No. 2003/0014750 A1).

Regarding claims 7 and 18, Horiwitz et al. teaches that the set-top box [202] may be a digital recording device (Col 5, Lines 47-51) and may further utilize a “removable medium” or optical disk (Col 4, Lines 45-50). However, the reference is unclear regarding the “selected content” necessarily being provided through local reproduction associated with the “removable medium”. In an analogous art pertaining to the control of access to content, the Kamen reference provides evidence that it is known in the art to facilitate parental control features wherein “selected content [is] provided on a removable medium” such as an optical disk (Para. [0026], [0027], [0046], and [0055]).

Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify the Horiwitz et al. ‘digital recording device’ such that the “selected content [is] provided on a removable medium” for the purpose of advantageously controlling access to both recorded and non-recorded content (Kamen: Para. [0003] – [0005]).

Claim 8 is rejected wherein the “medium includes at least one of a CD, DVD, magnetic tape, and flash memory” (Horiwitz et al.: Col 4, Lines 45-50).

In consideration of claim 15, the Horiwitz et al. reference discloses the particular provision of the user needing to log onto the system in order to view blocked content. The reference discloses the particular usage of individual profiles associated with individual users (ex. [602/604/606]) and the particular usage of passwords or other identification in order to access programming (Col 11, Lines 39-63). The reference, however, is unclear with respect to the “user information including a username and a password, [and] the user profile being associated with the username”. In an analogous art pertaining to the control of access to content, the Kamen reference discloses a method for controlling access to content wherein “user information includes a username and a password [and] the user profile is associated with the username” (Figure 8; Para. [0037] – [0039] and [0046]). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made so as to modify Horiwitz et al. such that the “user information including a username and a password, the user profile being associated with the username” for the common knowledge purpose of providing an added level of security when logging on to access restricted content and additionally for the purpose of advantageously providing a method for controlling access to recorded content (Kamen: Para. [0003] – [0005]).

(10) Response to Argument

The examiner respectfully disagrees that the rejection be reversed. The Examiner’s Answer only addresses arguments for patentability made by appellant. Any further

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arguments regarding other elements or limitations not specifically argued that the appellant could have made are not being addressed further for consideration by the panel. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.¹

A. Rejection of Claims 2-5, 9-14, 16, 19-21, 23-25, 27-30, and 32-35.

Claim 9

Appellant does not argue that the relied upon references teach all of the claimed limitations. Rather, appellant only argues that one having ordinary skill in the art would simply have not have been motivated to use the teachings of Horiwitz et al. in combination with the Ozer ('939) patent and co-pending/incorporated Ozer ('639) application because the references are nonanalogous and are used for a purpose other than for controlling access to content. The examiner respectfully disagrees.

Nonobviousness cannot simply be shown by attacking references individually where the rejections are based on combinations of references.² The rejection of record is primarily based upon the Horiwitz reference. Horiwitz operates such that a user tunes/access a particular program whereupon the system uses information obtained from the electronic program guide in order to determine whether or not access to the program is allowed or denied (Col 9, Lines 46-56; Col 11, Lines 54-63). Appellants do not contest that the

¹ See 37 CFR 41.50(a)(1) and MPEP 1211.

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reference teaches the claimed method ‘providing a default profile’, ‘comparing meta data associated with a selected content’, and ‘permitting or denying access to the content based on the comparison’. Horiwitz teaches that the device is capable of accessing the Internet to access ‘metadata’ or electronic program guide information (Col 5, Line 53 – Col 6, Line 1). The reference, however, does not explicitly teach using this capability to implement a known technique whereby the electronic program guide data or “metadata is associated with the selected content using a URL in connection with the selected content, and wherein the method further comprises obtaining the metadata using the URL, wherein the URL associates the metadata with the selected content”.

The rejection turns to Ozer (‘929) to supply ‘metadata’ or electronic program guide data including parental control information (Col 8, Lines 4-12; Col 11, Lines 17-28). Ozer (‘929) teaches that this ‘metadata’ is known in the art to be “associated with selected content using a URL in connection with the selected content, and wherein the method further comprises obtaining the metadata using the URL, wherein the URL associates the metadata with the selected content” (Ozer (‘635): Page 15, Lines 9-12; Page 17, Line 18 – Page 19, Line 10). Appellants do not contest that the Ozer (‘929) reference teaches this limitation. The examiner concluded that one having ordinary skill in the art would have been motivated to apply the known technique of accessing metadata to a known device (STB w/ Internet access) that was ready for improvement to yield the predictable result of linking selected content to electronic programming guide ‘metadata’. Not only was the technique recognized as part of the ordinary capabilities of one skilled in the art, but the usage of the technique would also

² See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375

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enable accurate measuring of television viewing behavior (Ozer et al. ('929): Col 2, Lines 19-34).

These references are analogous art because they are in the field of applicant's endeavor and/or reasonably pertinent to the particular problem with which the applicant was concerned.³ The Horiwitz reference is in the field of video distribution and relates to problems associated with controlling viewing of content similar to the instant application. Ozer ('929) is also in the same field of appellant's endeavor namely video distribution systems and it is also reasonably pertinent to the problem in so far as the Ozer ('929) provides 'metadata' (- or electronic program guide data similar to Horiwitz) that can be used for parental control applications as understood in the art. Therefore, it is respectfully submitted that one having ordinary skill in the art would have been sufficiently motivated to utilize the teachings from the references in combination.

As previously noted, the Horiwitz reference was relied upon to teach the concept of a parental control application that relies upon electronic program guide data or 'metadata'. The Ozer ('929) reference was relied upon to teach that the technique of retrieving/relating 'metadata' including features known in the art to be used in parental control applications to selected content was known in the art. The Ozer ('929) teaches the invention can be used to track programming (Col 6, Lines 19-24) which includes both television programming and advertisements (Col 14, Lines 3-21). The Ozer ('361) details the technique described broadly in Ozer ('929) for tracking one specific type of programming (Page 13, Lines 11-14) and linking it to electronic program guide information or 'metadata' that comprises

(Fed. Cir. 1986).

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information typically used for parental control applications as evidenced by Horiwitz (e.x. MPAA ratings information contained in an EPG is used for parental control applications). Both television programming and advertisements meet the broad definition of ‘content’ as used in the specification of audio and/or video data (Page 1, Summary – Para. 1) and both are understood to be represented in the electronic programming guide (Ozer (‘631): Page 10, Lines 14-17). Consequently, taken in combination, the references would not only restrict access to programming content using linked ‘metadata’ that can be accessed via URL based markers, but would also advantageously provide for the tracking of television viewership. The fact that Ozer (‘929) may use that ‘metadata’ for a different purpose, as outlined by appellant, would not dissuade one having ordinary skill in the art to use the known technique of obtaining ‘metadata using pointers’. It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant.⁴ Furthermore, the Supreme Court particularly held that it is erroneous to conclude that “a person of ordinary skill attempting to solve a problem would be led only to those elements of prior art designed to solve the same problem”.⁵ Therefore, it is respectfully submitted that one having ordinary skill in the art would have been sufficiently motivated to apply the ‘pointer’ technique disclosed Ozer (‘929) to Horiwitz in order to arrive at the claimed combination.

³ See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

⁴ See, e.g., *In re Kahn*, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006) (motivation question arises in the context of the general problem confronting the inventor rather than the specific problem solved by the invention); *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1323, 76 USPQ2d 1662, 1685 (Fed. Cir. 2005) (“One of ordinary skill in the art need not see the identical problem addressed in a prior art reference to be motivated to apply its teachings.”); *In re Linter*, 458 F.2d 1013, 173 USPQ 560 (CCPA 1972) (discussed below); *In re Dillon*, 919 F.2d 688, 16 USPQ2d 1897 (Fed. Cir. 1990), cert. denied, 500 U.S. 904 (1991).

⁵ See *KSR*, 82 USPQ2d 1397.

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Claim 10

Appellant's arguments for the patentability of claim 10 generally restate those previously presented with respect to claim 9. Accordingly, the rejection of these claims is believed proper for similar reasoning.

Claim 21

Appellant's arguments for the patentability of claim 21 generally restate those previously with respect to claim 9. Accordingly, the rejection of these claims is believed proper for similar reasoning.

Claim 27

Appellant's arguments for the patentability of claim 27 generally restate those previously with respect to claim 9. Accordingly, the rejection of these claims is believed proper for similar reasoning.

Claim 30

Appellant's arguments for the patentability of claim 30 generally restate those previously with respect to claim 9. Accordingly, the rejection of these claims is believed proper for similar reasoning.

Claim 33

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Appellant's arguments for the patentability of claim 33 generally restate those previously with respect to claim 9. Accordingly, the rejection of these claims is believed proper for similar reasoning.

Claim 35

Appellant's arguments for the patentability of claim 35 generally restate those previously with respect to claim 9. Accordingly, the rejection of these claims is believed proper for similar reasoning.

B. Rejection of Claims 6 and 26.

Appellant's arguments for the patentability of claims 6 and 26 are limited to the claims being dependent upon allowable claims. Accordingly, the rejection of these claims is believed proper for the above reasoning.

C. Rejection of Claims 7, 8, 15, and 18.

Regarding claims 7, 8, 15, and 18, appellant initially argues that the claims are allowable for reasons of dependency. The examiner respectfully disagrees for the reasoning previously set forth.

Claim 7 requires for "providing the selected content on a removable medium".

Appellants do not contest that Kamen teaches this limitation. Rather, appellants argue that the Ozer et al. reference teaches away from this feature since electronic program guide data would not be likely be available. The examiner respectfully disagrees.

A prior art reference that “teaches away” from the claimed invention is a significant factor to be considered in determining obviousness; however, “the nature of the teaching is highly relevant and must be weighed in substance.”⁶ All of the combined references relate to recording devices and electronic program guide data. Appellants fail to point out any teachings in Ozer (‘929) (or any of the other references) that would dissuade or somehow materially render the combination of references inoperative for “providing the selected content on a removable medium”. Similarly, appellants fail to specifically identify any passages in Ozer (‘929) that would somehow suggest that the existence of EPG information for recorded programs was not in fact available. In fact, Kamen provides evidence regarding the particular usage of EPG information for previously recorded programming that is on removable media such as optical disks (Para. [0007] and [0026] – [0028]). Both Horiwitz and Ozer (‘929) also teach that their respective inventions, which rely upon electronic program guide information, can be implemented using recording devices with removable media (Horiwitz: Col 4, Lines 45-63; Col 5, Lines 44-51; Col 5, Lines 56 – Col 6, Lines 8)(Ozer (‘929): Col 5, Lines 63 – Col 6, Line 5; Col 7, Lines 63-65). Not having EPG data available for recorded content would appear to circumvent the recording device implementation of Ozer (‘929). Accordingly, appellant’s argument that that the Ozer (‘929) reference ‘teaches away’ from the combination should not be found persuasive.

(11) Related Proceeding(s) Appendix

⁶ In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

SEB

January 30, 2008

Conferees:

Scott Beliveau



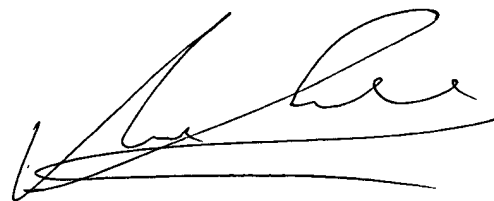
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